



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1996

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0826

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35413.

The City of Houston (the "city") received a request for certain information including the dates, case numbers and causes for traffic accidents at a particular intersection for the past eighteen months since January of 1994. The requestor indicates he is the father of a driver who was involved in an accident at the particular intersection which is subject of the instant open record request.

You have submitted a copy of the request letter, a letter submitted by the father of the driver of the vehicle involved in the accident, a copy of a year-to-date vehicle accident detail list by street, and a copy of the driver's August 4, 1995 letter to the city and an assistant city attorney's affidavit which asserts that the accident detail list is directly related to the subject matter of the anticipated litigation. You assert that the vehicle accident detail list should be excepted from required public disclosure under section 552.103 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990)

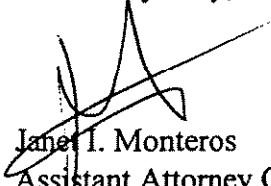
at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

You have submitted to this office copies of "notice of claim" letters from the requestor as well as his daughter which you are treating as a notices of claim. Because your request for a decision from this office was made prior the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the two notice letters you received satisfy the requirements of the TTCA or the applicable municipal statute or ordinance. We have reviewed the records, and our review shows that the letters taken together are related to the anticipated litigation. Thus, the city has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1992) at 4, the city could choose to release any information that is not otherwise confidential. Gov't Code § 552.007. Information that is confidential must be withheld from disclosure even after the litigation has concluded.¹ See Gov't Code § 552.352. We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of TTCA or applicable municipal statute or ordinance.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

¹Please note that if there is other confidential information in the requested records, it may not be disclosed even after the litigation has concluded. Release of confidential information is a criminal offense. Gov't Code § 552.352.

JIM/rho

Ref.: ID# 35413

Enclosures: Submitted documents

cc Jack Lappe
Mary Martha Lappe
5311 Jackwood
Houston, Texas 77096
(w/o enclosures)